OWNERS OF CARGO LATELY LADEN ON 'BRUNEI 602'

v.

OWNERS OF 'HAI HIN 28' & ANOR.

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
T KULASEKARAM J
AP RAJAH J
[CIVIL APPEAL NO. 42 OF 1983]
17 FEBRUARY 1984

SHIPPING: *Admiralty - Action in rem - Application to set aside proceedings - Jurisdiction - Duplicity of claim - High Court (Admiralty Jurisdiction) Act ss. 3(1), 4(4).*

Goods were shipped under a bill of lading on board on barge "Brunei 602" towed by the tug "Hai Hin 28" for carriage to and delivery at Indonesia. The appellants were the owners of the goods which, whilst being transported to their destination, fell into the sea and were totally lost. The appellants issued their writ in Admiralty *in rem* against the 1st respondents as the owners of the tug and the 2nd respondents as the owners of the barge. The tug was arrested. The respondents entered conditional appearance to the writ. They subsequently filed an application order that the proceedings against the 2nd respondents be set aside on the ground that the appellants having invoked Admiralty jurisdiction against the tug were precluded from proceeding against the barge and also on the ground of duplicity of claim.

Held:

[1] The appellants had on the facts of the case only one claim within the meaning of s. 3(1) of the High Court (Admiralty Jurisdiction) Act (the Act) in respect of the loss of their goods, which were owned by one person and shipped under one bill of lading and lost at sea in one mishap while being towed. (*The Banco* [1971] 1 AER 524; *Permina Samudra XIV* [1978] ILI L R 315; [1977] 1 MLJ 47 distinguished).

[2] Jurisdiction under the Act having been invoked when the writ was served on one of the named ships and the warrant of arrest executed, the appellants could not go against the other named sister ship and must strike it out of the writ. In the case before the Court the action pursued was one *in rem* and the vital question was therefore one of determining jurisdiction under the Act and not of determining liability on a contract of affreightment. [*Sacremento Navigation Company v. Milton H Saly* 127 AMC 397 distinguished].

[3] It would also be an abuse of the process of the Court to allow the appellants to circumvent the single arrest rule under s. 4 (4) of the Act by naming a sister ship as a different defendant in the same writ so as to be in a position to arrest both the offending and the sister ships.

[Appeal dismissed.]

Cases referred to:
The Banco [1971] 1 AER 524; Permina Samudra XIV [1978] ILI L R 315; [1977] 1 MLJ 47
Sacremento Navigation Company v. Milton H Saly 127 AMC 397

Legislation referred to:
High Court (Admiralty Jurisdiction) Act [Sing], ss. 3(1), 4(4)

Other sources referred to:
Carver on "Carriage by Sea" 13 Edn. Vol. 1 para. 480

JUDGMENT

AP Rajah J:

This appeal arises from an application by the 1st and 2nd respondents herein (the 1st and 2nd defendants) in an Admiralty action *in rem* to set aside proceedings against the 2nd defendants on the following grounds:

(a) that the Appellants (plaintiffs) having invoked the Admiralty jurisdiction against a vessel, namely the tug 'Hai Hin 28' belonging to the 1st defendants and arrested it, are thereafter precluded from proceeding against another vessel (in the instant case the dumb barge "Brunei 602") owned by the 1st defendants;

(b) that of duplicity of the claim against the same defendants.

The relevant facts may be stated briefly. On or about the 10 May 1981 there were shipped under a Bill of Lading of the same date 398 pieces of coal tar enamel coated pipes in three different sizes "on board the ship 'Brunei 602' towed by the tug 'Hai Hin 28' in or at the Port of Singapore" (as stated in the said Bill of Lading) for carriage to and delivery at Handil II Samarinda, Indonesia. The plaintiffs were at all material times the owners of the said goods. These goods had been laden aboard the dumb barge 'Brunei 602' and it was to be towed to its destination by the tug. Both the dumb barge and the tug were at all material times owned by Seng Leong Seong Shipping Enterprises (Pte.) Ltd. of Singapore. On 29 May 1981 the goods, whilst being so transported to their destination, fell into the sea off the coast of Kalimantan near Tanjong Puting and were totally lost.

It was in these circumstances that on 26 June 1982 the plaintiffs issued their writ in Admiralty *in rem* No. 487 of 1982 against the 1st defendants as the owners of the tug 'Hai Hin 28' and the 2nd defendants as the owners of the barge Brunei 602'. The indorsement to the Writ reads: "The plaintiffs, as owners of goods and/or holders of the Bill of Lading shipped on board the 2nd defendants vessel 'Brunei 602' for carrying from Singapore to Balikpappan, claim against the 1st defendants or alternatively the 2nd defendants for negligence and/or breach of contract and/or breach of duty in respect of loss to the said goods during the said voyage."

The tug was arrested on 3 February 1983. The 1st and 2nd defendants entered conditional appearance to the Writ on 11 February 1983 without prejudice to their applying to set aside the Writ or service thereof, and accordingly, on 18 February 1983 they filed an application by way of summons for an order that the proceedings against the 2nd defendants be set aside on the grounds as hereinbefore stated. The application was heard before the learned Deputy Registrar who acceded to the application and ordered that all proceedings against the 2nd defendants be set aside. The plaintiffs appealed against his Order. The appeal was heard before Wahab Ghows J who dismissed the appeal.

The plaintiffs now appeal against the decision of Wahab Ghows J.

The defendants do not dispute that the claim of the plaintiffs for the loss of the said goods is within the listed provisions of s. 3(1) of the Act, but they contend, the tug having been arrested on 3 February 1983, the plaintiffs cannot, thereafter, proceed against and arrest any other ship belonging to the 1st defendants, in the instant case the dumb barge 'Brunei 602'. They rely on *The Banco* [1971] 1 AER 524 and on s. 4(4) of the Act which reads:

> 4(4) In the case of any such claim as is mentioned in para. (d) to (q) of subsection (1) of s. 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of the action arose, the

owner or character of, or in possession or in control of, the ship, the Admiralty jurisdiction of the Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against-

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

The *Banco case (supra)* decides that a claimant may in his Writ name any number of ships belonging to the owner of the offending ship, but, having served the Writ on and arrested one of the several ships so named, the claimant must then, before he proceeds further with the action, take steps to have the other named ships struck off the Writ. The plaintiffs sought to distinguish the *Banco* case from the instant case by saying that in the former there was only one claim and one cause of action. They relied on the judgment of this Court in the *Permina Samudra XIV* [1978] ILI L R 315; [1977] 1 MLJ 47 which decides that:

(a) the expressions "claim" and "cause of action" in s. 4 (4) of the Act had the same meaning; and the arrests of *Permina 108* and *Permina Samudra XIV* were in respect of two claims each of which arose out of the list in s. 3(1) of the Act and each of which was founded on a different cause of action and the Appellants were entitled to arrest *Permina Samudra XIV;*

(b) that on the facts there were two separate writs based on separate and distinct causes of action and each writ named only one ship and had been served on only one ship, the ship named in the writ.

The plaintiffs contend that on the facts of the instant case they have three separate claims because of the three different sizes of the pipes and that each one of these three separate claims is based on a separate and distinct cause of action. We do not agree. The plaintiffs have on the facts of the case only one claim within the meaning of s. 3(1) of the Act in respect of the loss of the 398 coal tar enamel coated pipes, which were owned by one person and shipped under one Bill of Lading and lost at sea in one mishap on 29 May 1981, while being towed to Samarinda.

It was perhaps as a last resort that plaintiffs' Counsel suggested, during the course of the hearing, that we should take cognisance of the commercial realities of a contract of carriage performed by a tug and a dumb barge in tow. In the instant case, counsel for the plaintiffs says there was a joint operation in the carriage of goods, the dumb barge laden with the cargo and the tug supplying the motive power to transport it. In support the plaintiffs cite an American case, namely the *Sacremento Navigation Company v. Milton H Saly* 127 AMC 397, as of persuasive value.

The appeal in the American case involved the construction and application of s. 3 of the Harter Act 1893. The Harter Act deals with certain aspects of the carriage of goods by sea and s. 3 thereof deals with "exempting shipowners from liability for consequences of faults or errors in navigation or in the management of the vessel, as well as of certain perils, incase where they have exercised due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied". *(Carver on "Carriage by Sea" 13th Edn. Vol. 1 para. 480).* This case decided:

(1) that "where cargo on a towed barge is lost by the negligent navigation of a tug, the combination of the vessel and tug is the vessel transporting the cargo **within the meaning of the Harter Act**" (Emphasis ours) and

(2) that where cargo on a towed barge is lost by the negligent navigation of a tug which belongs to the barge owner, the Harter Act protects the owner of the barge from liability, since the combination of barge and tug is to be considered as one vessel.

It is to be noted that this case relates to a contract of affreightment and that the action pursued there was one *in personam* against the barge owners. In the present case the action pursed against the owners of the tug and the barge is one *in rem* and the vital question herein is therefore one of determining jurisdiction under the High Court (Admiralty Jurisdiction) Act and not of determining liability on a contract of affreightment in the construing of which the object must be to arrive at the real intention of the parties to the contract.

In our judgment it is now settled law that when a plaintiff brings an action *in rem* against more than one ship owned by a defendant, the jurisdiction of the Court is invoked when the writ is served on one of the named ships and the warrant of arrest is executed. That having been done, the plaintiff cannot go against the other named sister ships and should strike them out of the writ. If he does not do so, the Court, on the application of the defendant, will strike the other named sister ships out of the writ and set aside service of the writ and warrant of arrest on the other named sister ships. However, if the plaintiff eventually obtains judgment against the defendant, he will at that stage, be able to execute the judgment against any of the property of the defendant, including his other ships, then belonging to him (see the *"Banco" supra).*

In the present case it is, in our opinion, also clearly an abuse of the process of the Court to allow the plaintiffs to circumvent the single arrest rule under s. 4(4) of the Act by naming a sister ship (whether responsible or not for the loss or damage) as different defendants in the same writ, so as to be in a position to arrest both the offending and sister ship. The Plaintiffs should have issued their writ *in rem* against the owners of the tug or vessel 'Hai Hin 28' and the barge or vessel 'Brunei 602' as the defendants. They could then arrest the tug or the barge as either the offending ship or the sister ship and delete the unarrested ship from the writ. If the plaintiffs eventually succeed in proving liability against one of the two ships or both, they could execute the judgment against any of the property of the defendants including the unarrested and other ships then belonging to the defendants.

For these reasons the appeal is dismissed with costs.

Also found at [1984] 1 CLJ 272